

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,

Plaintiff,

v.

DEMITRIOUS GRUBBS, et al.,

Defendants.

No. 2:23-cv-02794-CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. ECF No. 2. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Examination of the complaint and review of the court's dockets reveal that plaintiff's complaint contains allegations that are identical to, and therefore duplicative of, claims raised in the complaint filed on November 26, 2023, in Hammler v. Grubbs, et al., No. 2:23-cv-02770-DJC-CSK (E.D. Cal.).<sup>1</sup> The complaint in this case is nothing more than a copy of the complaint that had already been filed less than one week prior in that case.

"A complaint 'that merely repeats pending or previously litigated claims'" is subject to

---

<sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

dismissal under 28 U.S.C. § 1915(e). Cato v. United States, 70 F.3d 1103, 1105 (9th Cir. 1995) (quoting Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988)). “[A] duplicative action arising from the same series of events and alleging many of the same facts as an earlier suit” may be dismissed as frivolous or malicious under section 1915(e). See Bailey, 846 F.2d at 1021. The court finds that plaintiff’s complaint is duplicative of that filed in Hammiller v. Grubbs, et al., No. 2:23-cv-02770-DJC-CSK (E.D. Cal.), because it is a carbon copy of the complaint in the earlier filed civil action against the same defendants. The undersigned recommends dismissing the complaint in this action without leave to amend based on the duplicative nature of plaintiff’s claims.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is denied as unnecessary.
2. The Clerk of Court randomly assign this matter to a district court judge.

IT IS RECOMMENDED that plaintiff’s complaint be dismissed without leave to amend as duplicative.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 20, 2024

  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

12/hamm2794.F&R.duplicative